

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

WP(C).No. 6198 of 2015 (Y)

PETITIONER:

GEEMON, AGED 37, S/O.CHACKO,
CHETTIYATTU HOUSE, SASTHAMUGAL,
MATTAKUZHAKARA, VARIKOLI PO,
THIRUVANIYUR VILLAGE,
ERNAKULAM DISTRICT.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS:

1. THE STATE OF KERALA
REP. BY THE SECRETARY TO THE GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM 695 001.
2. THE THIRUVANIYUR GRAMA PANCHAYTAH
REP.BY ITS SECRETARY, THIRUVANIYUR P.O.,
ERNAKULAM DISTRICT 682 308.
3. THE KERALA STATE POLLUTION CONTROL BOARD
REP.BY ITS ENVIRONMENTAL ENGINEER,
DISTRICT OFFICE, ERNAKULAM-11, 1ST FLOOR,
MANNA RESIDENCY, MC ROAD, PERUMBAVOOR,
ERNAKULAM DISTRICT 683 542.
4. TELMA MARY.K.J., ALEENA FOODS, KOLOTH HOUSE,
SASTHAMUGAL, VARIKOLI PO, THIRUVANIYUR VILLAGE,
ERNAKULAM DISTRICT 682 009.

R4 BY ADVS. SRI.SHYAM PADMAN
SRI.S.K.SAJU
SRI.A.RANJITH NARAYANAN
SRI JOHN THITHEEMOS

R1 BY GOVT. PLEADER SRI.JUSTIN JACOB
R3 BY SRI. M.AJAY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
11-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P.(C).No. 6198 of 2015 (Y)

PETITIONER'S EXHIBITS:

EXHIBIT P1 A TRUE COPY OF THE LICENSE ISSUED BY THE SECOND RESPONDENT DATED 28/5/2013

EXHIBIT P2 A TRUE COPY OF THE CONSENT ISSUED BY THE THIRD RESPONDENT TO THE FOURTH RESPONDENT DATED 3/9/2013

EXHIBIT P3 A TRUE COPY OF THE COMMUNICATION DATED 19/4/2014

EXHIBIT P4 A TRUE COPY OF THE DETAILS PROVIDED TO THE PETITIONER DATED 7/4/2014

EXHIBIT P5 A TRUE COPY OF THE COMMUNICATION OF THE THIRD RESPONDENT DATED 6/6/2014

EXHIBIT P6 A TRUE COPY OF THE PROCEEDINGS BEFORE THE THIRD RESPONDENT DATED 1/8/2014

EXHIBIT P7 A TRUE COPY OF THE COMMUNICATION DATED 20/11/2014

EXHIBIT P8 A TRUE COPY OF THE HEARING PROCEEDINGS DATED 12/2/2015

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.6198 of 2015 Y

Dated this the 11th day of March, 2015

JUDGMENT

The petitioner, a neighbour, has a grievance that the fourth respondent, while preparing bakery items by using chilly powder, pepper powder, etc. has been generating obnoxious fumes, causing health hazard to the petitioner.

2. Initially, based on the complaint of the petitioner and three others, the third respondent issued Exhibit P5 notice to the fourth respondent and later had a hearing, which concluded through Exhibit P6 proceedings. In terms of what has been concluded through Exhibit P6, the third respondent issued Exhibit P7 proceedings directing the fourth respondent to file her reply placing on record that she has complied with what has been discussed in Exhibit P6. At a later point of time, on 12.02.2015, there seems to

have been another hearing resulting in Exhibit P8 proceedings.

3. It is the singular grievance of the petitioner that despite a clear undertaking by the fourth respondent that she will discontinue the use of chilly powder within six months, she has not complied with the said undertaking. The learned counsel for the petitioner has submitted that the petitioner has the right to live in a pollution free environment and any hurdle thereto is in gross violation of Article 21 of the Constitution of India.

4. Taking this Court through various proceedings issued by the third respondent, the learned counsel has strenuously contended that unless this Court issues a mandamus to the third respondent to strictly enforce the pollution norms concerning the bakery being run by the fourth respondent, the petitioner will suffer irreparable loss and hardship.

5. The learned counsel for the fourth respondent, on the other hand, has submitted that three out of four persons, who initially complained to the third respondent, have already filed a civil suit in O.S.No.11/2014 on the file of the Munsiff Court, Kolencherry. According to him, though an Advocate Commissioner has been appointed, nothing concrete has emerged from the report of the Commissioner regarding the alleged pollution being caused by the fourth respondent.

6. It is the persistent submission of the learned counsel for the fourth respondent that since rest of the complainants could not obtain any relief from the civil court, the petitioner, who also was a co-petitioner, filed the present writ petition, thereby splitting the cause resulting in abuse of process. This submission has, however, been strongly contested by the learned counsel for the petitioner. According to him, he has nothing to do with the rest of the

co-petitioners and that his right to live, being a fundamental right, remains intact giving him ample leverage to approach this Court seeking a public law remedy.

7. The learned Standing Counsel for the third respondent has submitted that on three occasions it has conducted hearing, involving the complainants and the fourth respondent. Drawing my attention to the latest hearing said to have been conducted on 23.02.2015, the learned Standing Counsel has submitted that the Chairman of the third respondent has decided to give two months' time to the fourth respondent to ensure that she complies with the statutory norms in running the bakery.

8. Heard the learned counsel for the petitioner and the learned counsel for the fourth respondent, as well as the learned Standing Counsel for the third respondent, apart from perusing the record.

9. Indeed, the fulcrum of the dispute revolves around the fourth respondent using chilly powder in her bakery. The learned counsel for the petitioner would contend that even in the application filed by the fourth respondent for consent of the third respondent, chilly powder was not shown as one of the ingredients being used in the preparation of food items; on the other hand, the learned counsel for the fourth respondent, with equal vehemence, contends that water, salt, chilly powder, pepper powder and other ingredients are essential or sine qua non for preparation of any bakery item, especially chips. According to him, it does not lie in the mouth of the petitioner to contend that in the absence of such items having been mentioned in the application, the fourth respondent is prohibited from using them.

10. Elaborating on his submissions, the learned counsel for the fourth respondent has strenuously

contended that the pollution norms or regnant regulations do not prescribe the use of chilly powder. When a specific query was put why the fourth respondent herself gave an undertaking that she would stop using chilly powder in six months, the learned counsel would submit that the fourth respondent had been constrained to give such an undertaking under compelling circumstances.

11. Be that as it may, the third respondent has been actively seized of the issue. Indeed, it has so far had four hearings resulting in consequential proceedings thereof. Recently on 23.02.2015, after hearing all the parties concerned, including the petitioner and the fourth respondent, the third respondent has issued certain guidelines. Though the proceedings are in vernacular, and have not become part of the record, none of the parties to the lis have raised any objection with regard to their veracity.

12. In the facts and circumstances, I deem it appropriate, without drawing myself to the consideration of disputed questions of fact, to direct the third respondent to ensure compliance by the fourth respondent with the terms in the proceedings dated 23.02.2015 issued by it.

12. It is further made clear that if, as may be observed by the third respondent, the use of chilly powder by the fourth respondent is giving rise to any obnoxious fumes causing health hazard to the petitioner or any other person in the vicinity, it shall take effective steps to ensure that the fourth respondent remedies the situation to its satisfaction.

With the above observations, the writ petition stands disposed of.

At this juncture, the learned counsel for the fourth respondent has submitted that since a civil suit is pending on an identical issue at the behest of some other

neighbours, none of the observations made in the present disposition shall affect the rights of the fourth respondent in contesting the civil suit.

It is, indeed, made clear that whatever observations made presently have been made only for the purpose of disposal of the writ petition. As such, no observation made incidentally or otherwise presently shall be taken as an expression on merits of the matter by this Court.

Dama Seshadri Naidu, Judge

tkv